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10/595,231

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Dirk Kruse

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10/27/2008

WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.

11491 SUNSET HILLS ROAD

SUITE 340

RESTON, VA 20190

EXAMINER

GREEN, ANTHONY J

ART UNIT

PAPER NUMBER

1793

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10/27/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,231	<b>Applicant(s)</b> KRUSE ET AL.	
	<b>Examiner</b> Anthony J. Green	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-19 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 13-17, 19 and 23-26 is/are rejected.
- 7) ☒ Claim(s) 11, 12, 18, 22, 23-25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to the amendment submitted on 22 July 2008. Claims 9 and 20-21 have been canceled and new claims 22-26 added. Accordingly claims 1-8, 10-19 and 22-26 are currently pending.

### ***Claim Objections***

2. Claims 23-25 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

It is unclear as to how the form of the composition further limits the composition itself.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 23-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 23 it is unclear as to what is met by "a carbon-foam former". What is the form of a carbon-foam former? How can the composition of claim 1 be in this form?

Clarification is requested.

In claim 24 it is unclear as to what is meant by "in the form of a polymer material". Does this mean that a polymer material containing the composition of claim 1 is being claimed? How can the composition of claim 1 be in this form? Clarification is requested.

In claim 24 it is unclear as to what is meant by "in the form of a cable sheathing". What is a cable sheathing? This does appear to be a known component. How can the composition of claim 1 be in this form? Clarification is requested.

In claim 26 the term "coating" claimed as such is indefinite and misdescriptive  
See *Ex parte Scott* 66 USPQ 371.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6. Claims 1, 3-6, 8, 10, 13-15, 19 and newly added 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Pirig et al (US Patent No. 6,251,961 B1) for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the instant claims are not met by the reference as it does not show or describe any ceramic forming additive.

To this argument the examiner respectfully disagrees as the reference clearly teaches the use of  $\text{TiO}_2$  and also teaches the fillers such as silica may be added and according to applicant these are examples of ceramic-forming additives. Accordingly the instant claims are met by the reference.

7. Claims 1-5, 8, 10, 13-15 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Lopez (US Patent No. 6,620,349 B1) for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the instant claims are not met by the reference as it does not show or describe the use of a volume former and the melamine resin does not allow formation whereby in the event of heating the volume of the layer formed by the fire protection agent is increased at least 500% in volume

To this argument the examiner respectfully disagrees as the reference teaches the use of melamine and according to applicant this is an example of a volume former. Also applicant has provided no convincing evidence that this resin does not allow

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volume formation especially since it is an example of a volume former according to applicants specification and claim 4.

8. Claims 1-6, 8, 10, 13-15, 19 and newly added claim 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Scholz et al (US Patent No. 5,749,948 A) for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the reference does not disclose a fire protection agent for materials comprising ceramic forming additives and volume formers where the volume of a layer formed by the fire protection agent increases at least 500% in volume.

To this argument the examiner respectfully disagrees as the reference teaches the use of the same compounds as recited in the instant claims (namely  $\text{TiO}_2$ , melamine, pentaerythritol, ammonium polyphosphate) and it says that it is expandable. The property recited by applicant appears to be inherent absent evidence showing otherwise.

9. Claims 1-8, 10, 13-15 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Liu (US Patent Application Publication No. US 2004/0110870 A1) for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the reference does not teach a fire protection agent whereby in the event of heating, the volume of the layer formed by the fire protection

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agent is increased by at least 500% in volume. This increase in volume taught only by the applicant establishes a sufficient fire protection capacity.

To this argument the examiner respectfully disagrees as the reference teaches the use of the same compounds as instantly claimed namely  $\text{TiO}_2$  and silica which are ceramic formers and melamine phosphate which is an example of a volume former and AP 422 which is ammonium polyphosphate which is an example of an acid former and also contains a blowing agent (volume former). The property recited by applicant appears to be inherent absent evidence showing otherwise.

10. Claims 1-8, 10, 13-15, 19 and new claim 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Hastings (US Patent No. 4,879,320 A and 4,965,296 A) for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the reference does not teach a fire protection agent whereby in the event of heating, the volume of the layer formed by the fire protection agent is increased by at least 500% in volume. This increase in volume taught only by the applicant establishes a sufficient fire protection capacity.

To this argument the examiner respectfully disagrees as the reference teaches the use of the same compounds as instantly claimed namely  $\text{TiO}_2$  and other oxides which are ceramic formers and melamine or a blowing agent which is an example of a volume former and AP 422 which is ammonium polyphosphate which is an example of

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an acid former. The property recited by applicant appears to be inherent absent evidence showing otherwise.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pirig et al (US Patent No. 6,251,961 B1); Lopez (US Patent No. 6,620,349 B1); Scholz et al (US Patent No. 5,749,948 A); Liu (US Patent Application Publication No. US 2004/0110870 A1); and Hastings (US Patent No. 4,879,320 and 4,965,296 A) for the reasons set forth in the previous office action which are herein incorporated by reference.

Applicant has not provided any arguments concerning this rejection and accordingly it is repeated.

***Allowable Subject Matter***

13. Claim 26 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.



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14. Claims 11-12, 18, 22-23 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and provided that all claim objections and 112 rejections, if any, are overcome.

### ***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony J. Green/

Primary Examiner  
Art Unit 1793

ajg  
October 16, 2008